Department of Telecommunications and Energy
First Set of Information Requests

THE BERKSHIRE GAS COMPANY
D.T.E. 04-35

Witness: **William L. Barschdorf, Jr.**
Date: **May 3, 2004**

DTE 1-1: Referring to Attachment WLB-17, please describe how a level of flexibility and security were imputed upon each bid.

Response: The following point ranges were established for flexibility and supplier security prior to the review of the bids:

Flexibility

Point Range	**FOM Nomination Change Flexibility**
5	75% minimum take requirement
10	50% minimum take requirement
15	25% minimum take requirement
20	0% minimum take requirement

Supplier Security

Point Range	**FOM Nomination Change Flexibility**
0-10	Supplier determined to be least reliable
11-20	Supplier determined to be moderately reliable
21-35	Supplier determined to be secure and reliable

Assigning points for flexibility and supplier security was a collaborative process between NEGM, the Company and the NEGM Customer Group. Points were assigned to each bidder based on the structure and content of each individual bid.

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DTE 1-2: Referring to page 9 of Mr. Barschdorf's pre-filed testimony, please describe the basis for assessing the weighting factor of each of the four mentioned criteria that were used to evaluate bids.

Response: The four weighting factor criteria used to assess the bids: Price, Security of Supply, Bid Flexibility and Rating of the Supplier, was a collaborative effort between NEGM and the NEGM Customer Group prior to the issuance of the gas supply RFP. These same weighting factors have been used in other bid review processes involving NEGM and the NEGM Customer Group and have been submitted to the Department for its review. In fact, a review of testimony provided by the Company in docket The Berkshire Gas Company, D.T.E. 02-56 (2002) reviewing a supply contract with the EnCana Corporation shows that the same weighting factors were used in that filing. The Company is also aware that other LDC's utilize very similar weighting factors in their bid analysis process.

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DTE 1-3: Please refer to Attachment WLB-14, showing settlement differentials over approximately a four-year historical period. Please provide the spreadsheet(s) or, in their absence, detail the calculation used to convert such differentials into standardized pricing for purposes of scoring the bids on price. Such spreadsheet(s) or calculations should clearly indicate all relevant conversion factors applied to the prices as bid. Please also indicate how the conversion factors were calculated.

Response: The attached spreadsheet (Attachment 1-3) entitled Price Normalization Detailed Backup lists the pricing data used to calculate the prices shown in WLB-14. The source of the data was Platts Gas Daily Price Guide posted for the first of the month. In the majority of bids received, gas was offered in terms of a NYMEX + basis or a Niagara Index. These prices were not normalized and were used directly on the price scoring sheet. One of the purposes for looking at historical basis data was to determine a benchmark to compare the reasonableness of the new bids. For example if a bidder was offering gas at Niagara at NYMEX plus $0.80 and the historic price was NYMEX plus $0.241, then the offer would be considered out of the market.

Some of the suppliers submitted bids at Dracut which were quoted in terms of Texas Eastern ("Tetco") M3 prices plus a basis. By looking at the NYMEX/ Tetco differential, one can convert the Tetco M3 prices into NYMEX plus a basis price to equitably compare the offer to other offers that were quoted in NYMEX + basis terms. For example, if a bidder submits a quote of Tetco M3 plus $0.15, and the historical basis between NYMEX and Tetco M3 has been $0.65, then the total price for gas at Dracut is in the NYMEX + $0.80 range.

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DTE 1-4: In reference to the proposed Gas Sales Agreements ("GSA"), it would seem that the penalty for Seller default is limited to (a) the termination payment, which obligates the Seller to honor the contract through the end of the month in which the Buyer rightfully exercises its termination option, or (b) the obligation to pay the product of the Seller Deficiency Quantity and the Replacement Price Differential as long as the default continues and the Buyer elects not to terminate; in either case, the supply of gas is interrupted. Please (i) comment on this characterization of the penalty limitation and (ii) comment on how the proposed GSAs address the Department's long-standing concern for reliability of gas supply contracts, addressing, *inter alia*, the default penalty limitation and the hypothesis, as seems to be alluded to in section 12.3 of the GSA, that gas suppliers give priority to long-term over short term gas sales contracts.

Response: The GSA requires Nexen to supply gas on a firm basis for the term of the GSA. Although the GSA does not permit Nexen to interrupt deliveries (except in the case of force majeure, failure to pay for gas or failure to maintain creditworthiness), it does provide the Company with a remedy if Nexen breaches the contract by failing to deliver gas. In the event of such a breach, the Company is permitted to obtain replacement gas supplies; if it does so, Nexen is required to pay to the Company the difference between the contract price of gas and the price of the substitute gas supplies (the "Price Differential"). Under those circumstances, there will be no interruption in the supply of gas, although the gas may be purchased from alternate suppliers (at Nexen's expense). The GSA does not provide that the Company's ability to purchase substitute gas supplies and bill Nexen for the Price Differential is an exclusive remedy. Because the Company is also free to sue Nexen for damages for breach of contract for failure to deliver gas, it is not correct to characterize the penalty for Nexen's default as limited to payment of the Price Differential.

Alternatively, the Company can choose to terminate the GSA, in which case its exclusive remedy is to collect the Termination Payment.

Nexen is permitted to curtail deliveries in the case of force majeure, giving priority to deliveries under contracts of longer terms over those with shorter terms. It is Berkshire's understanding that the GSA is a long-term contract in the context of Nexen's portfolio and thus would be given priority in a curtailment situation.

It is Berkshire's view that these provisions enhance the reliability of the gas supplies to be purchased under the GSA. The GSA is not an interruptible agreement. Rather than being silent, however, with respect to the consequence of a breach of Nexen's obligations to deliver gas, it provides an explicit and immediately available remedy if Nexen in fact, interrupts deliveries. It also

Cont'd.

preserves the ability of the Company to sue for damages or, at their option, to terminate the GSA and collect a liquidated damages payment. Accordingly, it provides for a range of remedies in the event that Nexen defaults, one of which is explicitly designed to ensure that there is no interruption in the flow of gas which is to be purchased under the agreement.

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Witness: **William L. Barschdorf, Jr.**
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DTE 1-5: Please discuss, and support with documentation, the process by which the company identified potential management services providers and selected NEGM to provide such services.

Response: As stated on pages 16 and 17 of my testimony, Berkshire did not conduct a separate solicitation to identify potential management services providers. The Company did carefully consider the Department's directive in their decision approving the Encana contract. It also evaluated the performance to date of NEGM, the limited charges associated with its agency and management agreements and the costs that would be associated with conducting even the most basic solicitation. The Company then concluded that the costs of a solicitation would substantially exceed the total charges of the current agency and management agreements, much less the potential savings benefits associated with a competitive bid. Please see response to DTE 1-10. Berkshire also recognized the high level of performance that it had received from NEGM and their willingness identified in negotiations to reduce its management fee by 22% during the term of the Nexen agreement. Lastly, the Company was aware that another member of the Customer Group, KeySpan Energy Delivery New England would be issuing an RFP for agency and management services and decided to monitor that process before making a final decision on selecting an agent. The Company expected that it might benefit from such effort. KeySpan's decision to continue its agreements with NEGM confirmed Berkshire's decision that it would not be cost-effective or in its customers' interest to conduct a similar solicitation.

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DTE 1-6: Refer to the proposed Management Services Contracts, section 2 (k), where NEGM will be required to hire legal counsel as directed by the Customers, and section 3 and 6. Please address the following: (1) what provisions, if any, govern how the consortium members will agree on the need for NEGM to incur extraordinary expenses, and (2) is there a formal mechanism that would prevent extraordinary expenses incurred exclusively on behalf of one company (or more, but not all consortium companies) from being allocated to the other companies?

Response: The cited sections of the Management Services Agreement are intended to address costs which NEGM incurs at the direction of, on behalf of, and which benefit, the consortium of companies as a whole (i.e. the Customer Group). If the need to incur any extraordinary expenses arises, NEGM informs the Customer Group, proposes an estimated budget for that work, and obtains Customer Group approval. There have been very few instances in which any significant costs are incurred on behalf of, or which accrue to the benefit of, only one or a few companies. In instances in which such costs have been incurred, they have been passed through directly to the affected companies only and not billed to the entire Group.

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Witness: **William L. Barschdorf, Jr.**
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DTE 1-7: Is there a written agreement such as an Agreement to Form a Consortium, or a Memorandum of Understanding, among the consortium companies that addresses the purpose and/or objectives of the consortium, the premises underlying the formation of the consortium, and/or the respective duties and responsibilities of the consortium members? If so, please provide a copy.

Response: No, there is no such agreement or Memorandum of Understanding. The NEGM Customer Group was formed in the 1980's and has worked together to address the common objective of developing new, reliable, competitively priced natural gas supplies over the past 20 years. The Group meets periodically on a voluntary, self-electing basis to examine group gas supply solutions to meet the region's gas supply requirements. Guided by these periodic Customer Group meetings, gas supply and transportation capacity objectives of interest to the Group are identified, issues are analyzed, and specific development concepts/projects/RFPs are tabled, reviewed and acted upon. Customer LDCs join in project-specific groups based on their evaluation whether the specific project meets their needs at the relevant time.

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Witness: **William L. Barschdorf, Jr.**
Date: **May 3, 2004**

DTE 1-8: Please refer to page 16 of Mr. Barschdorf's testimony. Please describe how the NEGM's compensation mechanism was negotiated. Did Berkshire take part in the negotiation or was the negotiation only conducted by Keyspan?

Response: The compensation being paid to NEGM as part of this agreement was a result of direct negotiations with NEGM as well as the formal proposal request issued by KeySpan. Upon conclusion of both the processes NEGM informed the Customer Group that it was reducing its Management Services Agreement fee by 22% from the previous fee for the EnCana gas supply project based primarily on two factors: 1) the streamlined nature of the replacement contract arrangements in comparison to more complex structures like ANE; and, 2) in recognition of the three-year term of the contracts.

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Witness: **William L. Barschdorf, Jr.**
Date: **May 3, 2004**

DTE 1-9 Refer to page 16 of Mr. Barschdorf's testimony. Please comment on why Berkshire is willing to pay NEGM a monthly fee that does not regard the actual quantities of gas delivered to the Company that month. The Company explains on page 13 of Mr. Barschdorf's testimony that an important provision of the Sales Agreement allows Berkshire to elect not to take gas in a given month without exposing customers to any fixed costs. If this is an advantage, then why is Berkshire willing to expose customers to the fixed costs of the NEGM Services Agreement?

Response: The small monthly fee paid to NEGM (under the EnCana Agreement) is compensation for the operational, management, contract administration, coordination, reporting, accounting and bookkeeping services necessary for NEGM to administer the Gas Sales Agreements. These services are required each month regardless of whether the Company elects to nominate gas, or not. Berkshire's customers are not exposed to any fixed costs associated with gas supply received from Nexen. Payments received by Nexen are solely based on the volume of gas sold to Berkshire on behalf of its customers. There are no fixed costs, or demand charges, associated with the Gas Sales Agreement between the Company and Nexen.

CONFIDENTIAL AND PROPRIETARY
PROTECTIVE TREATMENT

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THE BERKSHIRE GAS COMPANY
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Witness: **William L. Barschdorf, Jr.**
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DTE 1-10 Refer to page 16 of Mr. Barschdorf's testimony. Quantify the reduction in NEGM's charges.

Response:

Northeast Gas Markets - Management Services Charge (MSC)	2003 * Management Service Charge	Projected 2004 ** Management Service Charge	Projected 2005-2007 Management Service Charge (Annually)
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
Totals			
Cost Percentage Reduction versus 2003		16.37%	22.01%

The management fee per dekatherm for 2003 through March 2004 is determined by multiplying the maximum daily quantity ("MDQ") by the number of days in the month by .

The same approach is followed for the management fee per dekatherm for April 2004 through March 2007 with the lower charge of .

*January 2003 charge is normalized for full month for comparative purposes.

**Reflects payments from January through March 2004 pursuant to prior management fee.

CONFIDENTIAL AND PROPRIETARY
PROTECTIVE TREATMENT

Department of Telecommunications and Energy
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Witness: **William L. Barschdorf, Jr.**
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DTE 1-11 How does NEGM's compensation mechanism compare to the compensation mechanism associated with the Encana contracts?

Response: The compensation mechanism for the Nexen and Encana contracts is essentially the same. The only difference is that NEGM agreed to reduce the . Please see responses to DTE 1-8 and DTE 1-10. The per unit management fee is multiplied by the maximum daily quantity and then the number of days in the month to calculate the total monthly fee paid to NEGM.

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DTE 1-12 Has Berkshire, or any other company in the Customer Group compensated Keyspan for conducting the RFP for Agency and Management services?

Response: No, the Company did not compensate KeySpan for any portion of the expenses related to its RFP process. Berkshire is not aware of any other companies providing compensation to KeySpan for costs incurred related to its RFP.

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DTE 1-13 Did the Customer Group in anyway fund the Agency and Management services RFP process Keyspan conducted?

Response: No, the Company is not aware of any other member of the NEGM Customer Group compensating KeySpan for costs it incurred related to developing and issuing its RFP. Please see response to DTE 1-12.

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DTE 1-14 Did Berkshire examine any of the other responses from the Keyspan RFP for Agency and Management services? If no, how can the Company know that NEGM is best provider for Berkshire's needs?

Response: While the Company did not review the actual responses from the KeySpan Agency and Management services RFP due to confidentiality limitations, the Company engaged in several discussions with KeySpan executives regarding the nature of its solicitation and the bid review process. Please see response to DTE 1-5.

The Company understood that KeySpan applied a rigorous process. Given the superior performance of NEGM, the limited costs to Berkshire and the confirmatory process of KeySpan, Berkshire determined that the continuing retention of NEGM was appropriate and in the best interest of its customers.

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Witness: **William L. Barschdorf, Jr.**
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DTE 1-15 Refer to page 16 of Mr. Barschdorf's testimony. Please explain Berkshire's criteria for determining when it is appropriate to disregard a Department directive.

Response: Berkshire is substantially committed to its obligation to secure a least cost, reliable gas supply for its customers and believes that the Nexen agreement contributes to the achievement of this objective. Berkshire aggressively looks for enhanced procedures to secure additional cost savings for the benefit of its customers. Berkshire analyzed the conditions in the Department's decision in D.T.E. 02-56 in detail. Based upon the Company's substantial experience with the issuance of competitive solicitations, the Company concluded that a formal RFP issuance would cost more than the total amount of the NEGM contract. Berkshire recognized NEGM's superior performance and considered the fact that KeySpan would be conducting a separate solicitation that might indirectly benefit Berkshire. As explained, Berkshire believes this was an appropriate decision which benefited customers. Consistent with Berkshire's practices before the Department, this decision was fully disclosed to the Department in my testimony. Please see response to DTE 1-5.

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Witness: **William L. Barschdorf, Jr.**
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DTE 1-16 Refer to page 6 of Mr. Barschdorf's testimony.

A) What was the total cost associated with the RFP process and subsequent negotiations with BP and Nexen? What portion of these costs were borne by the Customer Group and NEGM?

B) Please describe the cost-allocation mechanism used to assign costs to the individual members of the Customer Group.

C) Was Berkshire responsible for any portion of the costs associated with the RFP process and subsequent negotiations with BP and Nexen? If so, how much?

Response: A) The total cost of the RFP process and subsequent negotiations with BP and NEXEN was $176,552. Consistent with past practice involving NEGM consortium gas supply projects, 100% of these costs were covered by the Customer Group LDCs who chose to participate in the gas supply project.

B) The costs of an NEGM Customer Group gas supply project are allocated to participating LDCs on the basis of their individual maximum daily quantity ("MDQ") as a percentage of the total volume of the entire Customer Group participating in the project. For example, an LDC with an MDQ of 10,000 Dkt/day in a 100,000 Dth/day NEGM Customer Group project would be responsible for 10% of that project's costs.

C) Yes, as a Customer Group LDC electing to participate in the NEGM BP/NEXEN supply project, Berkshire was responsible for a portion of the project costs. Berkshire's allocated share of the cost, based on an MDQ of 1,080 Dth's (out of a Customer Group total of 64,733, or 1.668%) was $ 2,945. This limited cost allocation demonstrates the benefits of the collaborative process to Berkshire and its customers.